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UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC

Issued by the Department of Transportation on March 1, 2002

NOTICE OF ACTION TAKEN -- DOCKET OST-98-3760 -10

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Application of Northwest Airlines, Inc. filed 1/25/02 to:

XX Renew for two years exemption under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between any point or points in the United States and any point or points in France, directly and via intermediate points, and beyond France to any point or points in third countries,¹ and to integrate this authority with Northwest's existing certificate and exemption authority.

XX Amend authority requested above:

To permit Northwest to exercise all of the traffic rights available to U.S. carriers under the new U.S.-France open-skies agreement.² Specifically, Northwest requests that its exemption authority be amended to authorize Northwest to engage in scheduled foreign air transportation of persons, property, and mail:

- 1. From points behind the United States via the United States and intermediate points to a point or points in Metropolitan France and beyond;**
- 2. From points behind the United States via the United States and intermediate points to French Departments of America and beyond;**
- 3. From points behind the United States via the United States to New Caledonia and/or Wallis and Futuna;**
- 4. From points behind the United States via the United States and intermediate points to French Polynesia and beyond;**
- 5. From points behind the United States via the United States and intermediate points to Saint-Pierre and Miquelon and beyond.**

Further, Northwest requests that its exemption authority be amended to authorize it to engage in scheduled foreign air transportation of property and mail between France and any point or points. In addition, Northwest requests that any previous restrictions or conditions on its exemption authority be removed to the extent such restrictions are inconsistent with the new U.S.-France agreement. Northwest states that it will continue to use the exemption authority to operate in the U.S.-France market directly and on a code-share basis with KLM Royal Dutch Airlines.

Applicant rep: Megan Rae Rosia (202) 842-3193 DOT Analyst: Linda Lundell (202) 366-2336

¹ This applies to routes involving Metropolitan France as set forth in the January 22, 2002, U.S.-France open-skies amendments to the U.S.-France aviation agreement.

² On January 22, 2002, the United States and France signed open-skies amendments to the June 16, 1998, Air Transport Agreement between the United States and France. The open-skies agreement provides broad rights for the designated carriers of each side, including rights to conduct the services requested by Northwest here.

DISPOSITION

XX Granted U.S.-France, intermediate, and beyond authority, including removal of obsolete restrictions/conditions on these operations (subject to conditions, see below) ³

XX Dismissed Balance (see below)

The above action, granting U.S.-France, intermediate, and beyond authority and removal of restrictions/conditions, was effective when taken: **March 1, 2002**, through **March 1, 2004**, or until 90 days after final Department action on Northwest's corresponding certificate application, in Docket **OST-98-3758**, whichever occurs earlier.

The above action to dismiss the remainder of the application was effective when taken: **March 1, 2002**.

**Action taken by: Paul L. Gretch, Director
Office of International Aviation**

XX The authority granted is consistent with the aviation agreement between the United States and France.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

XX Holder's certificates of public convenience and necessity

XX Standard exemption conditions (attached)

XX Statement of Authorization approving Northwest/KLM code-share operations dated May 21, 1999, and the conditions therein

Conditions: The authority to operate via intermediate points and to third countries is limited to countries with which the United States has signed open-skies agreements and/or countries for which the carrier holds authority to serve under certificates or exemptions issued by the Department, and for which it holds route integration authority by virtue of either the present action or other action of the Department.

The route integration authority granted is subject to the condition that any service provided under this exemption shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in the award of the route integration authority granted should be construed as conferring upon Northwest rights (including fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless the carrier notifies the Department of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use the limited-entry route rights that are included in Northwest's authority by virtue of the route integration exemption granted here, but that are not being used by Northwest, the holding of such authority by route integration will not be construed as providing any preference for Northwest in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

³ The January 22, 2002, U.S.-France agreement includes certain restrictions on intermediate and beyond services on other than Metropolitan France routes. (See Section 1A of the amended Annex I route schedule as set forth in Article 1, paragraph 16 of the January 2002 agreement) The services authorized here are subject to those restrictions.

Remarks: The original exemption authority granted in this docket did not authorize service in the New York-Paris market and imposed certain service level and traffic restrictions on U.S.-France services because of then-applicable limitations/restrictions under the U.S.-France aviation agreement. As the new U.S.-France open-skies agreement eliminates these restrictions, including those on New York-Paris services, the New York-Paris market is now encompassed in the authority granted here, and those restrictions on Northwest's U.S.-France service are no longer necessary.

Dismissals: We dismissed that portion of Northwest's application with respect to operations from behind the United States. The authority to conduct operations from points behind the United States is inherent in the authority we award U.S. carriers to perform foreign air transportation. We also dismissed Northwest's request to engage in foreign air transportation of property and mail between France and any point or points, since such services are not in foreign air transportation and Northwest requires no additional Departmental authorization to conduct those services, as long as there is not more than a *de minimus* amount of traffic that would be in foreign air transportation, having an origin or destination in the United States.

On the basis of data officially noticeable under Rule 24(g) of the Department's regulations, we found the applicant qualified to provide the services authorized.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; (2) grant of the exemption authority was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted or dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

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http://dms.dot.gov/reports/reports_aviation.asp

APPENDIX A

U.S. CARRIER **Standard Exemption Conditions**

In the conduct of operations authorized by the attached notice, the applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with the applicable requirements of the Federal Aviation Administration Regulations, including all FAA requirements concerning security; and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.